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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/789,892	02/26/2004	Alan Kessler	VINTL.163A	9294

20995 7590 06/16/2006

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EXAMINER
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STIGELL, THEODORE J

ART UNIT	PAPER NUMBER
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3763

DATE MAILED: 06/16/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

## Office Action Summary

Application No.

10/789,892

Applicant(s)

KESSLER, ALAN

Examiner

Theodore J. Stigell

Art Unit

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 20 March 2006.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1-48 is/are pending in the application.
- 4a) Of the above claim(s) 12, 14, 21, 29 and 33 is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-11, 13, 15-28, 30-32 and 34-48 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 20 March 2006 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
  - ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- |  |   |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)  | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)   | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)             |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br>Paper No(s)/Mail Date <u>2/16/2006</u> . | 6) <input type="checkbox"/> Other: _____  |

**DETAILED ACTION**

***Response to Amendment***

***Drawings***

The drawings were received on 3/20/2006. These drawings are accepted.

***Specification***

The amendments to the Specification are acknowledged and accepted.

***Claim Rejections - 35 USC § 112***

The 112 rejections have been withdrawn in light of the amendments to the claims.

***Claim Rejections - 35 USC § 102***

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 1-11, 13, 15-20, 22-28, and 38-40 are rejected under 35 U.S.C. 102(b) as being anticipated by Bierman (5,855,591). Bierman discloses a securement device for a percutaneous sheath introducer comprising a pad (16) having an adhesive surface on one side thereof, a peel-off backing sheet (36) adhering to a portion of the pad, a securement base (22,38) secured to the pad, the base being comprised of a first upper support base portion (38) supported at least in part by a second lower plate (22), the support plate being secured to the pad and including at least one biasing member (20), with at least a portion of the member being disposed between the upper support base

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portion and having a generally fixed base and a deflectable beam section (upper part of 20) that flexes relative to the fixed base and at least one elongated strand (18) being coupled to the biasing member and having a free end, the free end capable of being tied around a portion of the medical article and secured relative to the securement base, wherein the base has one or more spaced holes (40b) extending therethrough and wherein the beam section is embedded in the second lower plate, the strand extending through beam section when inserted into the holes, wherein the base has a concave portion (48) in the middle portion thereof with two side walls on each side of the concave portion and wherein the base is made of a plastic material, the pad is made of a fabric material overlaid by an adhesive material, the strand is made of a flexible material that is non-extendable in its long axis, and the upper support base portion is made of a polymeric material.

***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

The factual inquiries set forth in *Graham v. John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:

1. Determining the scope and contents of the prior art.
2. Ascertaining the differences between the prior art and the claims at issue.
3. Resolving the level of ordinary skill in the pertinent art.

4. Considering objective evidence present in the application indicating obviousness or nonobviousness.

Claims 30-32, 34-37, and 41-48 are rejected under 35 U.S.C. 103(a) as being unpatentable over Bierman (5,855,591). Bierman discloses a securement device that includes most of the limitations recited in claims 30-32, 34-37 and 41-48 (See rejection above). Bierman does not disclose to make the first upper support elastically deformable and the second lower support plate harder than the first upper support plate. However, the Applicant has not disclosed in the Specification that this configuration is for any particular purpose or solves any stated problem. The configuration of having an elastic upper support plate and a harder lower support plate is therefore deemed to be a matter of design choice that fails to distinguish over the prior art of Bierman.

#### ***Response to Arguments***

Applicant's arguments filed 3/20/2006 have been fully considered but they are not persuasive.

In response to the Applicant's arguments that Bierman does not disclose a "biasing member", the Examiner respectfully disagrees. It is the Examiner's position that element (20) can be considered a biasing member because it will certainly keep tension on the strand when the two are engaged.

In response to the Applicant's arguments that Bierman does not disclose an elastic upper support and a harder lower support, the Examiner agrees but maintains that these limitations are merely matters of design choice.

***Conclusion***

**THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

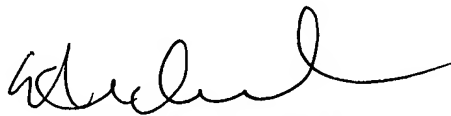
A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Theodore J. Stigell whose telephone number is 571-272-8759. The examiner can normally be reached on M-F 8:30-5:00.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Nicholas Lucchesi can be reached on 571-272-4977. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

  
Theodore J. Stigell

  
NICHOLAS D. LUCCHESI  
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